

## REMARKS

Claims 1-9, 11-29, 31, 32, 34-42 and 44-49 were pending in the present application. By the present Amendment, the claims 20, 31, 32 and 34-39 are amended. Thus, claims 1-9, 11-29, 31, 32, 34-42 and 44-49 remain pending in this application after submission of this amendment. Applicant believes that the present application is in condition for allowance in view of the foregoing comments; thus, a prompt and favorable action to this end is respectfully requested.

### I. AMENDMENT TO THE SPECIFICATION

Applicant amends the Specification as indicated above to clarify readability. No new matter is added.

### II. AMENDMENTS TO THE CLAIMS

The Applicant amends Claim 20 to return language inadvertently removed. The Applicant also amends Claims 31, 32 and 34-39 as indicated above to correct antecedent basis informalities and more distinctly claim the invention thereby putting the claims in better form for allowance. No new matter is added.

### III. FINALITY OF REJECTION IMPROPER

The Examiner concluded the present Office Action stating the “Applicant’s amendment necessitated the new ground(s) of rejection presented in this Office Action” and made the present Action final. The Examiner’s statement is contrary to the fact that one or more independent claims exist where the Applicant made no amendment necessitating a new ground of rejection. Rather than addressing the Applicant’s rebuttal arguments, the Examiner withdrew all previous rejections that were based on the Deshpande reference. The Examiner then formed new rejections based, in part, on new art, namely, Kratky. Therefore, finality is improper.

“[A] **final rejection is improper** where there is another new ground of rejection introduced by the examiner which was not necessitated by amendment to the claims nor based on information submitted in an [IDS]” (MPEP § 706.07(a)).

The Applicant made no significant amendment to one or more of the claims in which the Examiner presents new grounds of rejection. Therefore, **the Examiner**

**improperly made the present rejection final.** The Applicant respectfully requests that the Examiner withdraws the finality of the present rejection.

Each reason stated below separately and independently requires the Examiner to withdraw finality of the present rejection.

Independent Claim 1

In the Applicant's amendment (dated November 6, 2007), the Applicant made an insignificant amendment to Claim 1. As shown below, the only amendment to Claim 1 was to correct the indefinite article to "position" to avoid an antecedent basis issue. Thus, no amendment was made to Claim 1 necessitated a new ground of rejection.

|  |
|--|
| <p>1. (As previously amended) A position determination system comprising:</p> <p>a wireless computer network transceiver configured to communicate with a network wireless access point, the transceiver receiving data from the access point;</p> <p>a position determining entity to determine <del>[[the]]</del> <u>a</u> position of the mobile communication device based on the data received from the access point; and</p> <p>a display to display non position information data based on the determined position.</p> |
|--|

In the present Office Action, the Examiner abandoned the previous rejection of Claim 1 from the earlier Office Action (dated July 6, 2007), which cited Forrester, Blight and Deshpande and presented a new rejection citing new art in rejecting Claim 1. Specifically, Kratky (U.S. Pub. No. 2003/0046158) was not used previously but is now cited in the present Office Action in rejecting Claim 1.

The insignificant amendment to Claim 1 did not necessitate a new ground for rejection of the claim. Thus, finality of the present Office Action is improper. For this reason, the Applicant respectfully requests that the Examiner withdraws the finality of the present rejection.

Original Claim 19

Original Claim 19 depends from original Claim 17, which depends from Claim 1. Neither Claim 19 nor Claim 17 was amended and as shown above, Claim 1 only included

an insignificant amendment. The Examiner, however, cites new art and improperly makes the present Office Action file. For this reason, the Applicant respectfully requests that the Examiner withdraws the finality of the present rejection.

#### Independent Claim 29

Applicant's amendment of November 6, 2007 did not add anything new to narrow Claim 29. As such, Applicant's amendment did not necessitate a new ground of rejection. An amendment is not narrowing if it "did nothing more than make express what had been implicit in the claim as originally worded" (Interactive Pictures, Corp. v. Infinite Pictures, Inc., 274 F. 3d 1371, 1377, 61 USPQ2d 1152, 1157 (Fed. Cir. 2001)). Here, Applicant's amendment is not narrowing therefore does not necessitate a new ground of rejection.

In rejecting Claim 29, the Examiner cites new art (Kratky) therefore presenting a new ground of rejection for Claim 29. Thus, finality of the present Office Action is improper. For this reason, the Applicant respectfully requests that the Examiner withdraws the finality of the present rejection.

#### Independent Claim 40

Similarly, amendments to Claim 40 did not narrow Claim 40. Therefore, the Applicant's amendment to Claim 40 did not necessitate a new ground of rejection for Claim 40, however, the Examiner cites new art (Kratky) in rejecting Claim 40. Therefore, the Examiner presents a new ground of rejection for Claim 40. Thus, finality of the present Office Action is improper.

Applicant respectfully request review and withdraw the finality of the Office action of January 11, 2008, as premature for raising a new ground of rejection.

#### **IV. EXAMINER'S REJECTION OF PREVIOUSLY CANCELED CLAIM 30**

In the present Office Action, the Examiner presents a new reject of Claim 30. Claim 30 was previously canceled in the Applicant's Response of November 6, 2007, and therefore was no longer pending at the time of the present Office Action. Applicant respectfully requests withdrawal of this rejection of previously canceled Claim 30.

**V. EXAMINER MUST ADDRESS ALL ARGUMENTS**

The Examiner has failed to address each of the Applicant's arguments from the November 6, 2007 Response. If an Examiner deems an argument as not being persuasive, the Examiner "must address all arguments which have not already been responded to in the statement of the rejection" (MPEP 707.07(f), Examiner Note).

§103 Rejection of Claim 20

The Examiner did not response from the November 6, 2007 Response where the Applicant argued that "**First**, the Examiner fail[ed] to properly address the feature of 'a position ... **based on** ... the communication signals from the base transceiver station' as recited in Claim 20."

The Examiner did not response from the November 6, 2007 Response where the Applicant argued that "**Second**, the Examiner fail[ed] to properly address the combined features of 'a wireless telephone receiver' **AND** 'a wireless computer network transceiver' as recited in Claim 20."

If the Examiner intends on maintaining any §103 rejection, the Examiner is requested withdraw the present Office Action and issue a new Office Action that includes a response to each of the arguments made by the Applicant in the November 6, 2007 Response and the present Response that has not yet addressed by the Examiner.

**VI. REJECTION UNDER 35 U.S.C. §112**

The Examiner rejected Claims 7, 29, 37 and 39 under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement.

Claim 7

The Examiner states that claim 7 as amended to recite "'at least one of **location data and an address** of the wireless access point' was not supported by [the] original specification." (Emphasis in original.) This rejection is traversed.

Support for the claim amendment is found in the specification; for example, at paragraphs [0053] and [0058]. Paragraph [0053] discloses that "In this embodiment, the MIB is expanded to include data indicating the latitude, longitude and altitude of the beacon 104 and/or address." That is, paragraph [0053] contemplates location data (such

as latitude, longitude, and altitude), address information, or a combination. “At least one of” in claim 7 is the same as “and/or” in the specification; it embraces configurations with position data, configurations with address information, and configurations with a combination.

#### Claim 29

The Examiner states that the amended language “**mean for determining a position of the mobile device based on the data received from the access point**” was not supported by [the] original specification.” (Emphasis in original.)

Support for the amendment is found throughout the Specification. For example, the first paragraph of the Brief Summary states “[a] position determining entity **determines the position of the mobile communication device based on the data received from the access point**” (page 3, paragraph [0010]). Similarly, the Specification discloses where “[a] position determining entity determines the position of the mobile communication device based on ... the data received from the network wireless access point” (page 4, paragraph [0015]).

#### Claims 37 & 39

The Examiner states that the amended language “**mobile device generates a weighted combination** of the data received from the GPS satellites” was not supported by [the] original specification.” (Emphasis in original.)

Again, support for the amendment is found throughout the Specification. The first paragraph states “[a] position determining entity determines the position of the mobile communication device based on the data received from the access point or some combination of that data and data from other sources, such as GPS” (page 3, paragraph [0010]). “[P]osition determination may be based on a weighted combination of position data from various sources” (pages 17-18, paragraph [0066]). “The implementation discussed above illustrates the PDE 168 as a portion of the MS 102” (page 12, paragraph [0049]). “MS 102” is a “mobile station (MS) 102. The MS 102 is sometimes referred to as a wireless communication device, cellular telephone, or other position-enabled device” (page 5, paragraph [0022]).

Reconsideration and withdrawal of this rejection of Claims 7, 29, 37 and 39 are respectfully requested.

#### **VII. REJECTION UNDER 35 U.S.C. §103(a): Forrester & Blight**

The Examiner rejected Claims 20-24 and 28 under 35 U.S.C. §103(a) as being unpatentable over Forrester (U.S. Pub. No. 2003/0134646) in view of Blight (U.S. Pub. No. 2002/0184418). The rejection is traversed. Reconsideration, in light of the following statements, is respectfully requested.

##### Claim 20

In rejecting Claim 20, the Examiner makes reference to the language of Claim 20 as being disclosed by Forrester and Blight, as shown in the table below.

| Part | Claim 20 language   | Examiner's citations regarding Forrester                     | Examiner's citations regarding Blight |
|------|---|--|---------------------------------------|
| 1    | A position determination system comprising:   |  |                                       |
| 2    | a global positioning system (GPS) receiver<br><br>to receive data from a plurality of GPS satellites;   | "Fig. 2"<br><br>"Fig. 1, item 104" (col. 3, par. [0025])     |                                       |
| 3    | a wireless telephone receiver to receive communication signals from a base transceiver station;   | (col. 1, par. [0015])  |                                       |
| 4    | a wireless computer network transceiver configured to communicate with a network wireless access point,<br><br>the transceiver receiving data from the access point;<br><br>and | (col. 2, par. [0016-0018])<br><br>(col. 2, par. [0016-0017]) |                                       |
| 5    | a position determining entity to determine a position of a mobile communication device based on   |  |                                       |

|    |   |   |  |
|----|---|---|--|
| 5a | the data received from the GPS satellites, <u>if available with an acceptable error range</u> ,                       | (col. 2, par. [0020-0024])                |  |
| 5b | the communication signals from the base transceiver station, <u>if available with an acceptable error range</u> , and |   | Forrester does not disclose <b>a mobile device communicated (sic) directly to Wireless Access Point</b> ; if available with an acceptable error range and the data received from the network wireless access point.<br><br>Blight discloses <b>a mobile device communicated directly to Wireless Access Point</b> (Fig. 1, col. 2, par. [0033]), if available with an acceptable error range and |
| 5c | the data received from the network wireless access point.   | (col. 3 through col. 4, par. [0033-0036]) | the data received from the network wireless access point (page 4, par. [0089-0106])  |

### ARGUMENT I—Incorrect Claim Language Considered by Examiner

The Examiner explains that Forrester does not disclose features of the claimed system but Blight does disclose these features. In doing so, however, the Examiner refers to non-existent claim language. Specifically, the Examiner states that “Forrester does not disclose **a mobile device communicated (sic) directly to Wireless Access Point**” but that “Blight discloses **a mobile device communicated directly to Wireless Access Point** (Fig. 1, col. 2, par. [0033]).” The MPEP states that “[a]ll words in a claim must be considered in judging the patentability of that claim against the prior art” (*In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970)).

Applicant’s Attorney directs the Examiner attention to the language of Claim 20 and to the additional arguments presented below.

### ARGUMENT II—The Combination of “receiver” and “transceiver” Not Shown

Forrester does not show the combination of “a wireless telephone receiver” (part 3 in table above) **AND** “a wireless computer network transceiver” (part 4). Claim 20 recites a system comprising “a wireless telephone receiver” **AND** “a wireless computer network

transceiver”. For these features, the Examiner cites to Forrester at “col. 1, par. [0015]” and at “col. 2, par. [0016-0018]” respectfully.

If the Examiner’s interpretation combines alternative embodiments into a single embodiment, such a combination is improper. The cited aspects of Forrester are described in the alternative and not in combination. That is, Forrester describes system 100 as including a “device 102 [that] communicate over a wireless communication channel 106 with a plurality of base transceiver stations (BTSs),” thus the system resembles a W-WAN. Forrester states that this W-WAN system may be replaced with another type of system (e.g., a WLAN). The cited language of Forrester does not disclose a system with both “a wireless telephone receiver” AND “a wireless computer network transceiver” as recited in Claim 20.

Specifically, Forrester states:

While system 100 in general most resembles a [W-WAN], it will be apparent that system 100 is presented by way of example only. Thus, it will be understood that the systems and methods described herein are as applicable to W-WANs as they are, for example, to [WLANs], and [W-PANs]. Of course, for other types of systems, the various components of system 100 ... will need to be replaced. (Forrester, paragraph [0016].)

If the Examiner’s interpretation counts one element of Forrester as both the transceiver and the additional receiver of claim 20, such counting is improper. Forrester shows a “wireless communication transceiver 224 [which] comprises receiver 216” (Forrester at page 2, paragraph [0018]). That is, Forrester’s transceiver 224 includes a receiver 216. Claim 20, however, recites a “receiver” AND a “transceiver.” Therefore, the “receiver” of Claim 20 is not part of the “transceiver” but rather an additional feature. The Examiner appears to suggest that Forrester’s transceiver 224 shows both a receiver separate from a transceiver, which Forrester clearly does not show.

Because the disclosure of Forrester does not disclose separate features combined into a system, Forrester does not disclose a system having both “transceiver” and “receiver” features as recited in Claim 20. If the Examiner intends on maintaining this rejection, Applicant requests clarification as to what in either Forrester or Blight discloses the features of Claim 20.



**ARGUMENT III—Position “based on” BTS Signals Not Shown**

The Examiner fails to properly address the feature of “a position ... **based on** ... the communication signals from the base transceiver station” as recited in Claim 20. It is not clear from the Examiner’s rejection what in Forrester or Blight discloses “a position ... **based on** ... the communication signals from the base transceiver station” and Applicant’s Attorney is not able to determine what disclosure in Forrester or Blight discloses this feature of Claim 20. For this feature, the Examiner appears to cite Forrester at “(col. 3 through col. 4, par. [0033-0036])”. Applicant’s attorney does not see how the cited portions of Forrester disclose “a position determining entity to determine a position a position ... base on ... the communication signals.” Rather Forrester describes a device using position assist information (i.e., AA and SA information) to shorten a time to acquire GPS satellites. In Forrester, the “BSC 110 can be configured to also transmit updated position assist information to device 102” (paragraph [0035]). Thus, the “AA and SA information allows device 200 to quickly, preferably in 2 seconds or less, acquire GPS satellites 104 in order to make a position determination” (Forrester at paragraph [0030]; see also, paragraph [0029]). That is, the position assist information (i.e., AA and SA information) provided by the BSC quickens a duration of time. In sum, the determined location is unchanged with or without the position assist information. Therefore, Forrester does not describe a determined position of a mobile communication device is based on the communications signals from the base transceiver station, but rather, a quicker way to get the same location information.

If the Examiner intends on maintaining this rejection, Applicant requests clarification as to what in either Forrester or Blight discloses this feature of Claim 20.

**ARGUMENT IV—Position “based on” Access Point Data Not Shown**

Claim 20 recites “a position determining entity to determine a position of a mobile communication device based on ... the data received from the network wireless access point.” Again, it is not clear from the Examiner’s rejection what in Forrester or Blight discloses “a position ... **based on** ... the data received from the network wireless access point.” Applicant’s Attorney is not able to determine what disclosure in Forrester or Blight discloses this feature of Claim 20. If the Examiner intends on maintaining this

rejection, clarification as to what in either Forrester or Blight discloses this feature of Claim 20.

**ARGUMENT V—Position “based on” A+B+C Not Shown**

Claim 20 recites a “position ... based on” a combination of sources; namely, (1) “the data received from the GPS satellites”; (2) “the communication signals from the base transceiver station”; and (3) “the data received from the network wireless access point”. In the present rejection, the Examiner does not address a “position ... based on” a combination of sources. Furthermore, Applicant’s Attorney is unable to determine how the Examiner views the cited references to disclose such a feature as recited in Claim 20.

Reconsideration and withdrawal of this rejection are respectfully requested.

Claims 21-23 & 28

Claims 21-23 and 28 each ultimately depend from independent Claim 20. For at least the reasons of allowability of Claim 20, Claims 21-23 and 28 are also allowable.

Furthermore, the language referenced by the Examiner fails to show each feature of the dependent claims as described in more detail below. For example, both Claims 21 and 22 recite a “weighted combination.” For these features, the Examiner cites to Forrester at paragraphs [0016]-[0018] and [0020] on page 2 and paragraph [0091] [sic] on page 4. Applicant’s Attorney is not able to find paragraph [0091] in Forrester or a reference “weight,” “weighed” or “weighting” on page 4 of Forrester. Furthermore, Applicant’s Attorney is unable to determine how the cited paragraphs ([0016]-[0018] and [0020] on page 2) disclose a “weighted combination” as found in dependent Claims 21 and 22. If the Examiner intends on maintaining this rejection, it is respectfully requested that the Examiner explain how and where Forrester discloses a “weighted combination” as recited in Claims 21 and 20.

Reconsideration is respectfully requested.

**VIII. REJECTION UNDER 35 U.S.C. §103(a): Forrester, Blight & Kratky**

Claims 1-9, 11-13, 15-18, 25-26, 29-32, 34-42 and 44-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Forrester (U.S. Pub. No. 2003/0134646) in view of Blight (U.S. Pub. No. 2002/0184418), and further in view of Kratky (U.S. Pub.

No. 2003/0046158). The rejection is traversed. Reconsideration, in light of the following statements, is respectfully requested.

Independent Claim 1

Amended Claim 1 recites, in part:

A position determination system comprising:

a wireless computer network transceiver ...;

a position determining entity to determine a position of the mobile communication device based on the data received from the access point;  
and

a display to display non position information data based on the determined position.

For Claim 1, the Examiner states:

As to claim 1, 29, 40, Forrester discloses a position determination system comprising (Fig. 1): a wireless computer network transceiver configured to communicate with a network wireless access point (col. 1 through col. 2, par. [0015-0016]), the transceiver receiving data from the access point (col. 2, par. [0017]); and a display to display data based on the determined position (col. 2, par. [0021-0022]). However, Forrester does not disclose a mobile device communicated directly to Wireless Access Point, a display to display information data based on the determined position.

In the same invention, Blight discloses a mobile device communicated directly to Wireless Access Point (Fig. 1, col. 2, par. [0033]), a display to display information data based on the determined position (page 2, par. [0031]; page 3, par. [0046], [0083]). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the WLAN in wireless communication as taught by Blight to the system of Forrester in order to addition [sic] a bandwidth of WLAN in [sic] reduced the traffic of GPS networks.

The combination of Forrester and Blight do [sic] not disclose a display to display non position information.

Kratky discloses a display to display non position information (page 2, par. [0026]). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a display to display non position information as taught by Kratky to the combined system of Forrester, Blight in order to has a display the advertiser's location.

**ARGUMENT I—Claims 29 & 40 Rejected Without Reference To Any Claim Language**

For an applicant to understand a rejection and prepare a meaningful response, a rejection must be presented with clarity. Here, the Examiner has failed to explain how any feature from either Claim 29 or 40 is found in the cited references. In rejecting Claims 1, 29 and 40 *amass*, the Examiner references parts of Claim 1 but no language from Claims 29 or 40. “All words in a claim must be considered in judging the patentability of that claim against the prior art” (MPEP 2143.03 citing *In re Wilson*). In rejecting Claims 29 and 40, the Examiner uses no words of Claims 29 and 40. Thus, the rejection of Claims 29 and 40 is improper.

**ARGUMENT II—A “position determining entity” of Claim 1 Not Considered**

Furthermore, the Examiner skips over the feature of “a position determining entity to determine a position of the mobile communication device based on the data received from the access point” as claimed in Claim 1. Here, the Examiner has neither mentioned this feature nor cited a reference to this feature of Claim 1 and therefore this rejection is improper.

If the Examiner intends on maintaining the rejection of Claims 1, 29 and 40, the Applicant’s Attorney respectfully requests the Examiner issue a non-Final Rejection that describes where the references disclose EACH feature of the separate claims.

Reconsideration and withdrawal of this rejection is respectfully requested.

**Claims 2-9, 11-13, 15-18, 25-26, 30-32, 34-39, 41-42 & 44-49**

Claims 2-9, 11-13, 15-18, 25-26, 30-32, 34-39, 41-42 and 44-49 each ultimately depend from one of independent Claims 1, 20, 29 or 40. For at least the reasons of allowability of Claims 1, 20, 29 or 40, dependent Claims 2-9, 11-13, 15-18, 25-26, 30-32, 34-39, 41-42 and 44-49 are also allowable.

Furthermore, the language referenced by the Examiner fails to show each feature of the dependent claims as described in more detail below. For example, **Claim 5** recites “wherein the position information is an address.” For this feature, the Examiner cites to Blight at paragraph [0081], which discloses a “server 270 may include a graphics map.”

Wherein “the position information is an address” is not described at paragraph [0081]. If the Examiner intends on maintaining this rejection, it is respectfully requested that the Examiner explain how paragraph [0081] discloses “wherein the position information is an address” as recited in Claim 5.

Additionally, it is unclear to the Applicant’s Attorney how a “Handheld computer 100, depicted in FIG. 1” as referenced by the Examiner in paragraph [0031] of Blight discloses a “management information base” as recited in **Claim 6**.

The Examiner states that the feature of “a predicted range of the wireless access point” as recited in **Claim 8** is disclosed by Blight at paragraphs [0118] and [0142], however, the Applicant’s Attorney is unable to find reference to “a predicted range” in the cited paragraphs.

Furthermore, the Examiner states that Blight at paragraphs [0101] to [0106] discloses “wherein the transceiver communicates a request to the wireless access point for non position information based on the determined position of the mobile communication device” as recited in **Claims 12, 35 and 45**. At paragraph [0101], Blight discloses “[w]hen a request is received to identify the location of a mobile device” but does not disclose “a request ... for non position information” as in Claim 12.

The arguments above with respect to Claim 20 and “a position ... **based on** ... the communication signals from the base transceiver station” as recited in Claim 20 are equally applicable to **Claims 17, 38 and 48**.

Again, the arguments above with respect to Claims 21 and 22 and a “weighted combination” are equally applicable to **Claims 18, 39 and 49**, which each recite a “weighted combination.”

If the Examiner intends to maintain any of these rejections, Applicant’s Attorney respectfully requests that the Examiner explain the reliance on the reference text with more clarity. Reconsideration and withdrawal of this rejection to each of these dependent claims are respectfully requested.

**IX. REJECTION UNDER 35 U.S.C. §103(a): Forrester, Blight, Kratky & Pond**

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Forrester and Blight in view of Kratky as applied to claim 1 above, and further in view of Pond (U.S. Pub. No. 2004/0030601).

Claim 14 depends from independent Claim 1. For at least the reasons of allowability of Claim 1, Claim 14 is also allowable. Reconsideration and withdrawal of this rejection are respectfully requested.

**X. REJECTION UNDER 35 U.S.C. §103(a): Forrester, Blight, Kratky & Gunnarsson**

Claims 19 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Forrester, Blight in view of Kratky as applied to Claim 17 above, and further in view of Gunnarsson (U.S. Pub. No. 2003/0118015).

Claims 19 and 27 depend from independent Claims 1 and 20, respectfully. For at least the reasons of allowability of Claims 1 and 20, Claims 19 and 27 are also allowable. Reconsideration and withdrawal of the rejection are respectfully requested.

**CONCLUSION**

It is believed that all of the pending claims have been addressed in this paper. However, failure to address a specific rejection, issue, or comment, does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above are not intended to be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

In light of the comments herein, Applicant submits that the application is in condition for allowance, for which early action is requested.

Please charge any fees or overpayments that may be due with this response to Deposit Account No. 17-0026.

Respectfully submitted,

Dated: March 11, 2008

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